Supreme Court, U.S.
FILED
JUN 15 2005
OFFICE OF THE CLERK

No. 04-1067

In The
Supreme Court of the United States

STATE OF GEORGIA,

Petitioner,

v.

SCOTT FITZ RANDOLPH,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Can one occupant give law enforcement valid consent to search the common areas of the premises shared with another, even though another occupant is present and objects to the search?

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (Pet. App. 1-6) is reported at 278 Ga. 614, 604 S.E.2d 835 (2004). The opinion of the Court of Appeals of Georgia (Pet. App. 7-47) is reported at 264 Ga. App. 396, 590 S.E.2d 834 (2003). The trial court's order denying the motion to suppress (J.A. 23) is unreported.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on November 8, 2004. (Pet. App. 6). The petition for a writ of certiorari was filed on February 4, 2005, and was granted on April 18, 2005. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Three decades ago, this Court defined what constitutes "valid consent" for warrantless searches under the Fourth Amendment. The Court also decided who can consent, recognizing that valid consent may be obtained from the person whose property is being searched or from third-parties who have common authority over or a sufficient connection to the premises. This case presents the important question of whether police can obtain valid consent to search a shared premises where both occupants are present and one occupant consents while the other occupant objects.

A. The Motion to Suppress

Respondent Scott Fitz Randolph (hereinafter "Randolph") was indicted by the Sumter County, Georgia, grand jury on November 27, 2001, for possession of cocaine. (R. 7)[1]. Randolph moved to suppress the cocaine which had been seized in a search of the residence he shared with his wife, a search to which his wife consented, as Randolph admitted in his motion to suppress, but for which he had denied permission. (J.A. 3). Randolph claimed that the search of the residence, over his objection, was illegal and violated his Fourth Amendment rights. (J.A. 4).

Evidence presented at the October 3, 2002, suppression hearing established that Randolph's wife called the local police department on the morning of July 6, 2001,

[1] Citations to Volume I of the record on appeal are designated "R."; citations to the Corrected Transcript of Motion to Suppress Hearing are designated "M.T."

and asked an officer to come to the Randolph residence about a domestic dispute with her husband. (M.T. 4-7). Although the couple had previously been separated, she had returned to the marital home approximately three days before with Randolph's consent, and she still had clothing and furniture at the house. (M.T. 14-15; 23-24, 36-38, 43-44). Although the couple actually rented the house from Randolph's father, police understood Randolph and his wife to own the home. (M.T. 17; 30, 38). Randolph, who was then a practicing attorney, had an office in a room of the house.[2] (M.T. 6, 11-12; 25, 29).

Mrs. Randolph told the responding officers that Randolph had taken their child away. (M.T. 5-6). She also complained that Randolph had been using a lot of cocaine, which was causing financial and other problems for them. (M.T. 7). A few minutes later, Randolph returned to the home, told officers where he had taken their son and explained that he had taken the child because he was afraid his wife might take the child away to her family in Canada. (M.T. 6; 24).

Officers then escorted Randolph's wife to the neighbor's home where they picked up the child and returned to the Randolph residence. (M.T. 6-7). Mrs. Randolph renewed her accusations about Randolph's cocaine use. (M.T. 7). She told officers there were "items of drug evidence" in the home. (M.T. 13).

Sergeant Murray asked Randolph if he could check the house, and Randolph said no. (M.T. 7-9, 16; 29). The

[2] Randolph had been disbarred by the time of the suppression hearing. (M.T. 39-40). *See In the Matter of Scott Fitz Randolph*, 274 Ga. 482, 554 S.E.2d 485 (2001).

Sergeant then asked Mrs. Randolph if police could search the house, and not only did she say yes, but Mrs. Randolph led the Sergeant upstairs to a bedroom in which the officer saw a cut piece of a drinking straw on top of a jar. (M.T. 8-9, 16, 18). The straw was coated with white residue, and Sergeant Murray suspected it was used to ingest cocaine. (M.T. 8). He then went downstairs, reported what he had seen and went to his car to get an evidence bag. (M.T. 9).

When the Sergeant returned from the car, Mrs. Randolph had withdrawn her consent. (M.T. 9, 18, 19). The Sergeant then collected the items he had seen upstairs: the straw, a business card and some white residue, and took the evidence, as well as Randolph and Mrs. Randolph, to the police station. (M.T. 9, 20).

The Sergeant then obtained a search warrant to search the home further and seized 25 drug-related items during the subsequent search of the residence. (M.T. 10-11). No items were seized from Randolph's office. (M.T. 11-12). The only room which had been searched prior to the warrant issuing was the bedroom. (M.T. 20).

Randolph claimed that his wife was highly intoxicated from drinking heavily the preceding night, her face and eyes were red, her speech was slurred and she was unsteady on her feet. (M.T. 24-26, 33). However, no police officer detected an odor of alcohol about her or thought she was intoxicated. (M.T. 15, 45). Although Sergeant Murray described her as "a highly upset mother," she was not incoherent or incapable of giving consent due to any intoxication. (M.T. 45-46).

The trial court denied the motion to suppress in an order filed on October 17, 2002, specifically finding that Randolph's wife had "common authority to grant consent

for police to search the marital home." (J.A. 23). The trial court also found that she was "fully competent" to grant consent to search. (J.A. 23).

B. The Interlocutory Appeal

The trial court granted Randolph a certificate of immediate review, pursuant to O.C.G.A. § 5-6-34(b), of the order denying the motion to suppress. (R. 61). On November 26, 2002, the Court of Appeals of Georgia granted Randolph's request for an interlocutory appeal to review the trial court's ruling. (Pet. App. 8; R. 62).

On December 1, 2003, the Court of Appeals reversed the trial court's ruling, finding that where one occupant consents but the other occupant is present and objects to a search of an equally and jointly occupied premises, police must defer to the objecting occupant's position. (Pet. App. 9-10, 12). The appellate court found this precise question had not been addressed by this Court. (Pet. App. 9). The court found it was "reasonable" for one occupant to believe that his objection to a search would be honored by other occupants with equal rights in the premises. (Pet. App. 9). The court also found it was "reasonable" for police to defer to that objection. (Pet. App. 10). The court espoused the view that common authority over a premises "should permit a co-occupant to exercise privacy rights on behalf of all occupants." (Pet. App. 10).

Intertwined with this Fourth Amendment interpretation was the court's preference for a result that would promote the sanctity of marriage and avoid a rule that would create adversity. (Pet. 10). Although Georgia abolished the

"head of the household" doctrine in 1983,[3] the court noted that permitting "a wife's consent to search to overrule her husband's previous assertions of his right to privacy threatens domestic tranquility." (Pet. App. 11). *United States v. Matlock*, 415 U.S. 164 (1974), was viewed as establishing a "presumption" that one co-occupant has waived his right of privacy as to the other co-occupants only in his absence and that "presumption" did not stand where the occupant was present and asserted his Fourth Amendment rights by refusing to consent, particularly since the right purportedly involved was "the right to be free from police intrusion, not the right to invite police into one's home." (Pet. App. 12-13). Finally, the court noted the issue was not Mrs. Randolph's right to consent to a search, but whether she could waive "his" right to be free from a search and he clearly had not waived it. (Pet. App. 13).

The State of Georgia (hereinafter "the State") petitioned for review in the Georgia Supreme Court. (Pet. App. 1). The Georgia Supreme Court granted certiorari on April 28, 2004, to decide "whether an occupant may give valid consent to search common areas of a premises shared by another occupant who is present and objects to the search." *Id.*

On November 8, 2004, the Georgia Supreme Court affirmed the Court of Appeals' judgment, finding that where two persons have equal use and control of a premises, one

[3] *See* Ga. L. 1983, p. 1309, amending O.C.G.A. § 19-3-8 to continue interspousal tort immunity. Prior to 1983, O.C.G.A. § 19-3-8 provided, "The husband is head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except insofar as the law recognizes her separately, for her own protection, for her benefit, or for the preservation of public order."

occupant's consent to search the premises "is not valid" if the other occupant is present and objects to the warrantless search. (Pet. App. 1). That court interpreted *Matlock* as holding that an occupant with common authority over a shared premise could give valid permission for a search of that premises only in the absence of the other occupant, as "the risk assumed by joint occupancy" existed only in the latter's absence. (Pet. App. 2-3). The court concluded that police must obtain the consent of all occupants who are present before a search may occur in order to protect all individuals' Fourth Amendment rights. (Pet. App. 3).

The dissent interpreted *Matlock* as holding that the third-party consent rule applies even if the subject of the search is present and objects to the search, as consent is an established exception to the warrant requirement and a warrantless search without probable cause does not violate the Fourth Amendment if authorities have voluntary consent from one authorized to grant it. (Pet. App. 4-5). The dissent viewed *Matlock* as recognizing that the objecting occupant has no greater expectation of privacy because he had assumed the risk, through sharing the property, that another person would consent to a search. (Pet. App. 5).

The dissent declined to adopt a rule which made the refusal of one co-occupant to be "paramount" or which looked to the presence or absence of the defendant but would instead apply a rule which looked to whether the defendant had assumed the risk that a third party who had common authority over the shared premises "would permit inspection in his own right." (Pet. App. 5-6). The dissent opined that, once Mrs. Randolph gave valid consent to a search of the home she shared with him, that was sufficient. (Pet. App. 6).

The State's motion to stay the remittitur was granted on November 23, 2004. On April 18, 2005, this Court granted the State's petition for a writ of certiorari to review the Georgia Supreme Court's decision.

SUMMARY OF ARGUMENT

One who has common authority over a shared premises should be able to give police permission to search that premises in his or her own right, if that permission is voluntary. Nothing more should be required under the Fourth Amendment's touchstone of reasonableness.

A reduced expectation of privacy comes with sharing a house or an apartment with another and is inherent in the nature of joint occupancy itself. That reduced expectation of privacy does not spring into being simply because police ask for consent to search. For that reason, permitting police to obtain consent for a warrantless search from only one joint occupant does not infringe upon any reasonable expectation of privacy, even in the face of another occupant's refusal to consent.

ARGUMENT

ONE OCCUPANT CAN GIVE VALID CONSENT FOR LAW ENFORCEMENT TO SEARCH THE COMMON AREAS OF A PREMISES SHARED WITH ANOTHER, EVEN THOUGH THE OTHER OCCUPANT IS PRESENT AND OBJECTS TO THE SEARCH.

A "search" occurs under the Fourth Amendment "when an expectation of privacy that society is prepared to

consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). This Court has "long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so." *Florida v. Jimeno*, 500 U.S. 248, 250-51 (1991).

The issue for resolution here is whether the voluntary consent of one co-occupant with common authority over a premises is sufficient to permit police to conduct a search of common areas of that premises, despite the objections of another occupant who is present. Applying the long-established "totality of circumstances" test for ascertaining "valid consent" as well as third-party consent principles, the State of Georgia submits that the answer to this question is a resounding yes. One who has equal access to and control over a premises should be able to give police permission to search that premises in his or her own right if that permission is voluntary. Nothing more should be required under the Fourth Amendment's touchstone of reasonableness.

A reduced expectation of privacy comes with sharing a house or an apartment with another and is inherent in the nature of joint occupancy itself. That reduced expectation of privacy does not spring into being simply because police ask for consent to search. For that reason, permitting police to obtain consent for a warrantless search from one joint occupant does not infringe upon any reasonable expectation of privacy, even if another occupant is present and objects to the search.

This Court has consistently eschewed per se rules for determining reasonableness under the Fourth Amendment. That is why the per se approach adopted below,

which calibrates a co-occupant's expectation of privacy on his presence or absence from the premises when police ask for permission to search and which elevates one occupant's refusal above all else, is flawed. Whether police can obtain valid consent to search from one occupant of a jointly held premises should not turn upon the timing of the request to search. Instead, a totality of circumstances analysis should be employed.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." This Court has moved away from relying upon distinctions developed in property and tort law and looks to whether "the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place." *Rakas v. Illinois*, 439 U.S. 128, 143 (1978); *Katz v. United States*, 389 U.S. 347, 353 (1967). However, the Fourth Amendment generally bars a warrantless entry into a person's home. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Payton v. New York*, 445 U.S. 573 (1980).

To that end, a search conducted without a warrant issued upon probable cause is "presumptively unreasonable" unless it falls within one of the well-established exceptions: consent, exigent circumstances, or automobiles. *United States v. Karo*, 468 U.S. 705, 717 (1984). It is the consent exception that is involved in this case.

"[T]he search of property, without warrant and without probable cause, but with proper consent, is valid under the Fourth Amendment." *United States v. Matlock*, 415 U.S. 164, 165-66 (1974). Such consent may be obtained either from the person whose property is searched or "from a third party who possesses common authority over the

premises." *Illinois v. Rodriguez*, 497 U.S., at 181 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), and *Matlock*, 415 U.S., at 171). Police may also obtain valid consent to search from a third person if police reasonably believed, at the time of the warrantless entry, that the third person had common authority over the premises but facts later show police were mistaken, using an objective standard. *Rodriguez*, 497 U.S., at 188-89.

Ordinarily, a defendant has the burden to show that his Fourth Amendment rights were violated by the challenged search or seizure. *Rakas v. Illinois*, 439 U.S., at 132. However, when the state seeks to rely upon consent to justify the lawfulness of the search, the state has the burden of proving that consent was freely and voluntarily given. *Schneckloth*, 412 U.S., at 222; *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968).

"Voluntariness" for consent to search does not turn on the presence or absence of a single criterion. *Schneckloth*, 412 U.S., at 226. Instead:

> [T]he question of whether a consent to a search was in fact "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.

Id., at 227. Knowledge of the right to refuse consent is simply one factor to be considered, as opposed to being a prerequisite for a voluntary search, as the weightier concern is that consent not be the result of coercion, threats, force or submission to a claim of lawful authority. *Id.*, at 227, 234.

Two "competing" concerns are accommodated in a totality of circumstances approach: "the legitimate need

for such searches and the equally important requirement of assuring the absence of coercion." *Id.*, at 227. As to the need for consent searches, this Court observed:

> In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence.

Schneckloth, 412 U.S., at 227.

In establishing the test for determining valid consent, this Court also rejected the notion that "consent" to search was a "waiver" of a person's constitutional rights such that the waiver had to be judged under the knowing and intentional relinquishment standard of *Johnson v. Zerbst*, 304 U.S. 458 (1938), noting there was a "vast difference between those rights that protect a fair criminal trial and the rights guaranteed under the Fourth Amendment." *Schneckloth*, 412 U.S., at 235-42. A strict waiver standard for trial rights was adopted to insure that the defendant would receive a fair trial. *Id.*, at 241. The Fourth Amendment's protections "have nothing to do with promoting the fair ascertainment of truth at a criminal trial" but instead guard "the 'security of one's privacy against arbitrary intrusion by the police. . . .'" *Schneckloth*, 412 U.S., at 242 (quoting *Wolf v. Colorado*, 338 U.S. 25, 27 (1949)).

A search cannot be said to be "somehow 'unfair'" if the person consented. *Schneckloth*, 412 U.S., at 242. There "is nothing constitutionally suspect in a person's voluntarily allowing a search." *Id.*, at 243. The Court noted that policies underlying the Fourth Amendment should not discourage citizens from helping to apprehend criminals and that a community has "a real interest" in encouraging

consent, as the search that ensued could yield needed evidence for solving and prosecuting a crime, and help make sure that an innocent person was not wrongly charged. *Schneckloth*, 412 U.S., at 243.

More importantly, the Court found that such a "waiver" approach to consent searches would be "thoroughly inconsistent" with decisions recognizing third-party consents, citing *Coolidge v. New Hampshire*, 403 U.S. 443, 487-90 (1971), where the wife voluntarily gave a gun and clothing that were her husband's to police; *Frazier v. Cupp*, 394 U.S. 731, 740 (1969), where evidence seized from a shared duffel bag was deemed admissible, as "the defendant had assumed the risk that his cousin, with whom he shared the bag, would allow the police to search it"; and *Hill v. California*, 401 U.S. 797, 801-805 (1971), where police validly seized evidence from the petitioner's apartment as incident to a third party's arrest where police had probable cause to arrest the petitioner and reasonably, but mistakenly, believed the person arrested was he. *Schneckloth*, 412 U.S., at 244. The Court concluded there was nothing in the purpose of the waiver requirements of *Johnson v. Zerbst* that justified equating "a knowing waiver with a consent search." *Schneckloth*, 412 U.S., at 246.

One year after defining what valid consent is, this Court dealt with who can consent and held that not only can the defendant give consent, but third persons with "common authority over or other sufficient relationship to the premises or effects sought to be inspected" can give permission for a warrantless search. *Matlock*, 415 U.S., at 171. In that case, Matlock was arrested in the front yard of a house leased to a married couple, and living in the home were the lessee wife, several of her children including her

daughter Mrs. Graff, Mrs. Graff's toddler son, and Matlock. *Matlock*, 415 U.S., at 166. Police knew Matlock lived there but never asked him for consent. Instead, arresting officers went to the door and were admitted into the house by Mrs. Graff, she was asked for and gave officers consent to search for money and a gun, she told police which bedroom she and Matlock occupied, and police found a gun and money in a diaper bag in the only closet in that room. *Id.*, at 166.

In beginning its legal analysis, this Court noted:

> It has been assumed by the parties and courts below that the voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid against the co-occupant, permitting evidence discovered in the search to be used against him at a criminal trial.

Matlock, 415 U.S., at 169.

Next, the Court noted that the question of whether a wife's permission to search a residence in which she resided with her husband "could 'waive his constitutional rights'" had been left open in *Amos v. United States*, 255 U.S. 313, 317 (1921), and that "more recent authority" clearly indicated that "the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." *Matlock*, 415 U.S., at 170 (citing *Frazier v. Cupp*, 394 U.S., at 740).

The Court noted *Schneckloth* had recognized that third-party consent cases, such as *Frazier* and *Coolidge*, supported the view that a consent search is "fundamentally different in nature from the waiver of a trial right." *Matlock*, 415 U.S., at 171.

> These cases at least make clear that when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained by a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

Matlock, 415 U.S., at 171.

In a footnote, this Court made clear this "common authority" is not derived from property law but:

> [R]ests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

Matlock, 415 U.S., at 171 n.7.

The question of consent to enter is to be judged against "an objective standard," looking at whether all the facts available to the officer at the moment would warrant a man of reasonable caution to believe that the consenting party had authority over the premises. *Illinois v. Rodriguez*, 497 U.S., at 188. This objective standard does not require complete factual accuracy, as probable cause to support a warrant is itself an "'assessment of probabilities in particular factual contexts.'" *Rodriguez*, 497 U.S., at 184 (quoting *Illinois v. Gates*, 462 U.S. 231, 232 (1983)). Instead, the Fourth Amendment requires "reasonableness" from magistrates and police in responding to the many factual situations that regularly arise in the search and

seizure context. *Rodriguez*, 497 U.S., at 185. Based upon that objective standard of reasonableness, this Court deemed valid a search conducted by police based upon the consent of a third person present at the apartment whom police reasonably believed at the time had common authority over the premises, but who, as subsequent facts revealed, did not.

In reaching that conclusion, this Court made clear that:

> What [the defendant] is assured by the Fourth Amendment itself, however, is not that no government search of his house will occur unless he consents; but that no such search will occur that is "unreasonable."

Rodriguez, 497 U.S., at 183 (quoting the Fourth Amendment).

Applying these principles, the State submits that the per se rule adopted by the Georgia Supreme Court, requiring unanimous consent from all present cohabitants in order for police to conduct a search (Pet. App. 3), is clearly at odds with *Rodriguez*. That rule unequivocally guarantees that no search will occur unless the defendant consents, but this Court has not interpreted the Fourth Amendment as providing such assurance.

One element that can make a search of a person's house reasonable "is the consent of the person or his cotentant." *Rodriguez*, 497 U.S., at 184. The State submits police officers acted reasonably in asking for and relying upon the voluntary consent of Mrs. Randolph to search the couple's marital home. The information available to police indicated the couple was still married, they both lived in

the home, and she had just as much authority over the residence as did Randolph.

More importantly, Mrs. Randolph was not waiving Randolph's Fourth Amendment rights or consenting to a search of his property. She was authorizing police to search *their* property. Little, if any, consideration was given by the state appellate courts to this tenet of *Matlock*.

Had she simply avoided any verbal exchange with police about consent and elected instead to physically retrieve the straw with white residue on it from the upstairs bedroom where it had been in plain view, those voluntary actions would have been constitutionally permissible under *Coolidge*. However, because police asked Mrs. Randolph for her consent after her husband refused, the Georgia Supreme Court deemed her response to be irrelevant. The Fourth Amendment does not proscribe voluntary cooperation. *Florida v. Bostick*, 501 U.S. 429, 429 (1991). Her ability to cooperate with police by granting permission to search should not be restricted by a per se rule which looks only to her spouse's decision to grant or to refuse permission to search.

Were this Court to adopt the per se rule proposed by the Georgia courts, the attempts of joint occupants to cooperate with authorities and to give permission for warrantless searches would become legally irrelevant, as one occupant's refusal trumps all. In application, such a rule would thwart the ability of law enforcement officials to locate and seize evidence of a crime before evidence is destroyed.

The fallacy of the per se rule applied below is further highlighted by the information on which police sought consent to search: Mrs. Randolph told police Randolph

used large amounts of cocaine and "items of drug evidence" were in their home. There is no legitimate interest in possessing contraband, so that "government conduct that only reveals the possession of contraband compromises no legitimate privacy interest." *Illinois v. Caballes*, ___ U.S. ___, 125 S.Ct. 834, 837 (2005). The rule applied below unwittingly protects non-legitimate interests by looking only to one occupant's refusal, despite another occupant's consent and willingness to cooperate.

The State acknowledges that a different result might have ensued had Mrs. Randolph given consent for police to search her husband's law office, which was also in the Randolph home, and contraband was only found in the law office. Whether she had actual or apparent authority over the law office would become the issue. However, *Rodriguez* made clear that police do not have to accept every invitation to search and placed a duty upon law enforcement to make further inquiry if a reasonable person would doubt the truth of the third person's representations. *Rodriguez*, 497 U.S., at 188. Moreover, application of the "totality of circumstances" test would take such a factual distinction into account, instead of focusing, as did the Georgia appellate courts, on simply whether Randolph was present and objected to a search.

Instead of looking at whether Mrs. Randolph had common authority over the couple's home in order to exercise her own right to permit inspection, the state supreme court focused almost exclusively on Randolph's expectation of privacy and calibrated that privacy interest on his presence or absence from the home. The state supreme court deemed the "risk" assumed from jointly-occupied premises to be merely an inability to control access to the premises in one's absence. The court obviously

assumed that, if that occupant were at home, then he or she would have absolute control, as not only did the court apply a rule which gave Randolph total control of access to the home, but it made his refusal to consent paramount. Such an assumption is flawed, as no co-occupant can reasonably expect to have total control over a premises he or she shares with another. The Fourth Amendment should not be interpreted to recognize such an unreasonable expectation and one which ignores the rights of other occupants with access to and use of the premises as great as the defendant's.

The court below applied a per se rule that turned on the timing of the sergeant's request to search, rather than examining the totality of circumstances and considering whether Mrs. Randolph had common authority over the home in order to permit a search in her own right. The state court's approach ignores the reality that a co-occupant's reduced expectation of privacy simply grows out of sharing the premises with someone else, and not because police are there and ask for permission to enter.

The question presented is phrased in terms of two occupants because the consent issue arose from a domestic dispute involving a married couple. The answer to the question in this case, however, readily applies to all joint occupancy searches and will likely arise in contexts that transcend domestic relations and any "war on drugs." Of tantamount concern is a case involving child or spouse abuse, which has not yet ripened into exigent circumstances, and it is the abuser who refuses police access to check the premises for signs of abuse.

Finally, reasonableness is the touchstone of the Fourth Amendment. *United States v. Knights*, 534 U.S.

112, 118 (2001); *Bond v. United States*, 529 U.S. 334, 338 (2000); *Florida v. Jimeno*, 500 U.S., at 250; *California v. Ciraolo*, 476 U.S. 207 (1986); *Smith v. Maryland*, 442 U.S. 735, 740 (1979); *Katz v. United States*, 389 U.S., at 360. Reasonableness is treated as a "function of the facts" because:

> [N]o template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance, and without inflating marginal ones.

United States v. Banks, 540 U.S. 31, 36 (2003).

The State submits it is reasonable for police to obtain and act upon the voluntary consent of one occupant with common authority to search the common areas of that premises, even if other occupants object. The occupant giving consent is not waiving anyone else's rights but is simply granting access to search the areas shared with others and in which there is an obvious reduced expectation of privacy. If a search authorized by one with apparent authority can be deemed reasonable, then surely the Fourth Amendment permits one with actual authority to give police valid permission to search, regardless of other occupants' positions. Such a rule flows logically from *Schneckloth*, *Matlock*, and *Rodriguez*.

CONCLUSION

WHEREFORE, the State of Georgia prays that the decision of the state appellate court be reversed and that a rule be adopted which makes one co-occupant's voluntary consent sufficient to authorize a warrantless search.

Respectfully submitted,

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